Supreme Court of the United States.

DECEMBER TERM, 1867.

No. 121.

THE UNITED STATES, *Appellants*,

vs.

HENRY S. GILLETT ET AL.

Appeal from the Supreme Court of the Territory of New Mexico.

BRIEF FOR APPELLEES.

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ABSTRACT OF THE CASE.

This case comes before this Court, by an appeal taken on behalf of the United States, from a judgment of the Supreme Court of the Territory of New Mexico.

Under the act of Congress approved July 17, 1862, entitled "*An act to suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate the Property of Rebels, and for other Purposes,*" (12 Statutes at Large, 589,) proceedings were commenced in this case, in the District Court of the United States for the Third Judicial District of the Territory of New Mexico, at November Term, 1865, by Libel of Information, in the name of the United States of America, filed in said Court, by the Attorney of the United States for the District of New Mexico, against certain real estate described therein, situated in the county of El Paso, and State of Texas, the property

of the said Henry S. Gillett and John S. Gillett, of said county and State; which property was seized by the United States Marshal of said District, as *Captor*.—(Printed Record, pp. 1, 2, 3, 6, 7.)

At said Term of said Court, the Clerk thereof, issued a monition in said cause, on which the Marshal made his return.—(Record, pp. 3, 4.)

The said John S. Gillett and Henry S. Gillett, the claimants to the said property, filed in said Court, at said Term, their bond, respectively, with sureties, conditioned for the payment of the costs in said cause; which bonds were approved by the Clerk.—(Record, pp. 4, 5, 6.)

The Marshal, at said Term of said Court, filed with the Clerk, a publication containing his proclamation in the case, "admonishing and summoning all persons claiming any interest in said property, or knowing or having any thing to say why the same should not be decreed to be forfeited to the United States, and be condemned and sold to answer the prayer of said libel," to appear before said Court, "and there to interpose their claims, and answer said libel, and make their allegations in that behalf."—(Record, pp. 7, 8.)

The Counsel for the claimants moved the Court to quash the monition, return of the Marshal thereon, and the publication in the cause, for reasons in said motion stated and set forth. The Court overruled said motion. The claimants' Counsel excepted, and tendered a bill of exceptions, which was signed and sealed by the Court.—(Record, pp. 8, 9.)

The said Henry S. Gillett, one of the claimants to said property, in his own proper person, appeared in said Court, and offered to file a plea to the *jurisdiction* of the Court; to the filing of which plea, the District Attorney, on the part of the United States, objected, as, also, to *any appearance* of the said claimant, in said cause; which said objections were *sustained* by the Court.—(Record, pp. 9, 10.)

The Court ordered that testimony in the cause, be taken before a Commissioner, and reported at said Term. Testimony was taken, accordingly, and read in open Court.—(Record, pp. 10, 11.)

And, at the Term aforesaid, the said Court rendered a final decree in said cause, whereby the said real estate was condemned as forfeited to the United States, and the same was ordered to be sold and conveyed by the United States Marshal for the District of New Mexico,—*one-half* of the proceeds of such sale, after the deduction and payment of all fees and costs accruing in said case, *to go to the said Marshal*, Abraham Cutler, as *informant*.—(Record, pp. 11, 12.)

Thereupon, the Attorneys of the said claimants, asked the Court for an appeal to the Supreme Court of said Territory, in the cause. To their appearance for this purpose, the District Attorney objected; which objection was sustained by the Court.—(Record, pp. 12, 13.)

At the January Term, 1866, of the Supreme Court of the Territory of New Mexico, the Counsel of the said claimants filed in said Court, their assignment of errors in said cause.—(Record, pp. 24, 25.)

The District Attorney moved the said Court "to dismiss the appeal of the said Gilletts in this cause, for the reason that there was *no appearance* of the said Gilletts in the Court below, and that the judgment against them in that Court, was by *default*;" which motion was overruled by the Court.—(Record, pp. 26, 27.)

The United States District Attorney filed his joinder in error.—(Record, p. 22.)

Whereupon, it was, by the said Supreme Court, "ordered, adjudged, and decreed, that the judgment and decree in the Court below, be, and hereby is, reversed and annulled, and this cause be remanded to the District Court for the county of Dona Ana, to be by the said Court, dismissed for the want of jurisdiction in said Court, over the real estate in the county of El Paso,

Texas, libelled in this cause, at the costs of the United States in the District Court, and in this Court."—(Record, p. 27.)

From said decision, the District Attorney, on behalf of the United States, took an appeal to this Court.—(Record, pp. 27, 28.)

Points and Authorities.

For the Appellees, the following points and authorities are submitted:

I. The District Court of the United States for the Third Judicial District of the Territory of New Mexico, had no jurisdiction whatever over the real estate in the county of El Paso, Texas, libelled in this cause. The only legislation which confers on said Court, any jurisdiction in the county of El Paso, Texas, is contained in an act of Congress, approved March 3, 1863, entitled "*An Act to facilitate the Collection of the Revenue in El Paso County, Texas, and in the Territory of New Mexico,*" (12 Statutes at Large, 761,) which act is in these words:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the tenth section of an act entitled 'An act making appropriations for the legislative, executive and judicial expenses of the Government for the year ending thirtieth of June, eighteen hundred and fifty-eight,' approved March third, eighteen hundred and fifty-seven, be, and the same is hereby, repealed; and the act entitled 'An act creating a collection district in Texas and New Mexico,' approved August second, eighteen hundred and fifty-four, is hereby revived and re-enacted; *Provided,* That the collector shall reside at El Paso, Texas, instead of Frontera.

"Sec. 2. *And be it further enacted,* That the jurisdiction of the district court of New Mexico shall extend over the citizens of El Paso county, Texas, only in cases not instituted by indictment, and the trial and proceedings for violations of the revenue laws in said district court of New Mexico, shall be the same as in other district courts

of the United States invested with admiralty powers; and this act shall take effect from and after its passage."

The 3d section of the act of Congress approved August 2, 1854, (10 Statutes at Large, 335,) which act is revived and re-enacted by the 1st section of the act above quoted, provides as follows:

"SEC. 3. *And be it further enacted*, That the District Court for the Territory of New Mexico shall have and exercise jurisdiction over all cases which shall arise in the Collection District of Paso del Norte, in the administration of the revenue laws, in the same manner, as if the said district was entirely within the Territory of New Mexico."

The foregoing legislation, while it extends the jurisdiction of the District Court of New Mexico, over the *Citizens* of El Paso county, Texas, in certain *Revenue* cases, manifestly confers no jurisdiction whatever on said Court, in proceedings against *Real Estate*, under the *Confiscation* act of July 17, 1862.

See authorities on this point, cited by the Counsel of the said claimants, in a brief filed in this cause, in the Supreme Court of New Mexico.—(Record, pp. 25, 26.)

II. The rulings of the said District Court, in *refusing* to allow the said claimants to file a plea to the *jurisdiction* of the Court, and in *refusing* to permit *any appearance* of the said claimants in said cause, (Record, pp. 9, 10,) were in palpable violation of the rights of the claimants, and are grossly repugnant to the fundamental principles of our jurisprudence, as well as to the settled practice of the Courts.

This proposition seems so obvious, that no argument or citation of authorities in support thereof, is deemed necessary in this Court.

III. The said District Court, as a Court of *Admiralty*, had no jurisdiction of the subject. The doctrine is well-settled, that in the trial of all cases of seizure on

Land, the Court sits as a Court of *Common Law*, and that in all cases at common law, the trial must be by *Jury*. This was a case of seizure on land, and the District Court, therefore, erred in trying the cause upon testimony taken before a Commissioner, and without the intervention of a jury.

The 7th section of the confiscation act of July 17, 1862, provides that the proceedings in Court, to secure the condemnation and sale of any property seized under said act, shall be *in rem*, and "shall conform *as nearly as may be*, to proceedings in *admiralty or revenue cases*."

The "proceedings in admiralty or revenue cases," to which reference is made in the act, are obviously the "proceedings" in the course of practice adopted by the District Courts of the United States, in cases of seizure where the proceedings are *in rem*.

By the Judiciary act, these Courts are invested with exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation and trade of the United States, where the seizures are made on waters which are navigable from the sea, by vessels of ten or more tons burden, within their respective Districts, as well as upon the high seas; and, also, of all seizures on land or other waters than as aforesaid, made under the laws of the United States. According to the judicial constructions which, at an early period, were given to this enactment, seizures of the *first* above mentioned description, are of *Admiralty* jurisdiction, and those of the *second* description, of *Common Law* jurisdiction. Suits *in rem*, in these cases, are, therefore, instituted on the admiralty side, or the common law side, of the Court, according to the *locality* of the seizure.—(Conkling's Treatise, title Practice in Cases of Seizure, 453, 456.)

When the seizure has been made on *Land*, or on waters not so navigable, it is of *Common Law*, or as is frequently said, of Exchequer jurisdiction, and the suit is instituted by what is technically called an *Information*.—(Conk. Tr., 512. And see note.) And in such cases, the plea on the part of the claimant, or defence, on a traverse of the facts alleged in the information, concludes to the *Country*, and the issue is completed by adding the *Similiter*.—(Conk. Tr., 546.)

When the proceeding is on the exchequer or *Common Law* side of the Court, the trial is conducted in the same manner, and is subject to the same incidents, as an *ordinary personal action*.—(Conk. Tr., 557.) And *all issues of fact* are tried by *Jury*.—(8 Wheaton, 391.)

In the case of The Sarah, (8 Wheaton, 391,) Chief Justice Marshall delivering the opinion of this Court, says:

"By the act constituting the judicial system of the United States, the district courts are courts both of common law and admiralty jurisdiction. In the trial of all cases of seizure on land, the court sits as a court of common law. In cases of seizure made on waters navigable by vessels of ten tons burden and upwards, the court sits as a court of admiralty. In all cases at common law, the trial must be by jury. In cases of admiralty and maritime jurisdiction, it has been settled, in the cases of The Vengeance, reported in 3 Dallas's Rep. 297; The Sally, in 2 Cranch's Rep. 406; and The Betsy and Charlotte, in 4 Cranch's Rep. 443; that the trial is to be by the court.

"Although the two jurisdictions are vested in the same tribunal, they are as distinct from each other as if they were vested in different tribunals, and can no more be blended than a court of chancery with a court of common law."

In the case of Clark *vs.* The United States, (2 Washington's Circuit Court Reports, 519,) it was held that the 9th section of the Judiciary act of 1789, assigns to the *Common Law* side of the District Courts, all cases of

seizures on *Land*, arising under the laws of impost, navigation and trade.

The 7th article of the amendments to the Constitution of the United States, declares that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

This Court, in the case of Parsons *vs.* Bedford, (3 Peters, 433,) decided that "in a just sense, this amendment to the Constitution may well be construed to embrace all suits which are not of equity and admiralty jurisdiction, whatever may be the *peculiar form* which they may assume to settle legal rights."

IV. The said Court decreed that *one-half* of the proceeds arising from the sale of said real estate, *after deducting and paying all fees and costs*, should be paid to the United States Marshal, as "*informant;*" whereas the act of July 17, 1862, under which the said proceedings were had, does not authorize the payment of any portion of the proceeds of such sale to an *informant*, but, on the contrary, expressly provides in the 7th section, that such proceeds "shall be paid into the Treasury of the United States," for the purposes specified in said act.

Many other questions arising upon the record, might be here presented, but it is deemed unnecessary to do so.

The decision of this Court, affirming the judgment of the Supreme Court of New Mexico, is confidently asked for, in this case.

ROBERT LEECH,
Counsel for Appellees.